

**CRISIS COMMUNICATION**  
**WAUKESHA BAR - November 18 Ethics CLE**  
**Dan Conley – Quarles & Brady LLP**  
**[Daniel.conley@quarles.com](mailto:Daniel.conley@quarles.com) – (414) 277-5609**

**APPLICABLE ETHICS RULES**

**CLIENT-LAWYER RELATIONSHIP**

- 1.1 Competence
- 1.2 Scope of representation and allocation of authority between lawyer and client
- 1.3 Diligence
- 1.4 Communication
- 1.5 Fees
- 1.6 Confidentiality
- 1.7 Conflicts of interest current clients
- 1.13 Organization as client

**ADVOCATE**

- 3.4 Fairness to opposing party and counsel
- 3.6 Trial publicity
- 3.7 Lawyer as witness

**TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS**

- 4.1 Truthfulness in statements to others
- 4.2 Communication with person represented by counsel
- 4.3 Dealing with unrepresented person
- 4.4 Respect for rights of 3rd persons

**CRISIS RESPONSE CHECKLIST**

- 1. Identify/Gather Key Decision-Makers (or Their Proxies); Confirm or Assign Responsibilities.**
- 2. Consider Need to Bring in Outside Expertise or Depth.**
  - /// Accounting experts
  - /// Environmental experts
  - /// Legal experts
  - /// Public relations experts
  - /// Computer/web security experts
  - /// Insurance recovery specialists
  - /// Forensic engineers
  - /// Other outside technical expertise
  - /// Objectivity
  - /// Issue spotting
  - /// Privilege/Expert/Evidentiary Implications
- 3. First Things First in a Crisis.**
  - /// First fix the problem/stop the bleeding.
  - /// Focus on the people involved and most affected by the problem.
  - /// These are often individual personal tragedies and doing the right thing is important.
  - /// These are often business problems needing business solutions.
- 4. Quickly Find Out What Happened in a Disciplined Way.**
  - /// Protect work product/attorney-client privilege if possible.
  - /// Balance importance of limiting early information on a need to know basis against importance of promptly gathering/providing accurate information from/to target audiences.
  - /// Be sensitive to attorney-client and work product privilege; conflicts of interest; organization as client; fairness to opposing party; truthfulness in statements to others; communications with people represented by counsel; dealing with unrepresented person; respect for rights of third persons.
  - /// Remind organization about press/e-mail/social media/attorney-client privilege policies.

**5. Focus on Key Audiences/Relationships and Coordinate Appropriate Messages/Responses to Each.**

- |   |  |  |
|---|--|--|
| <b>A.</b> Victims/families.                                       | <b>G.</b> The press & social media (most unpredictable and uneven) | <b>L.</b> Trade groups                                   |
| <b>B.</b> Employees/recruits                                      | <b>H.</b> Competitors  | <b>M.</b> Potential jurors                               |
| <b>C.</b> Regulators (e.g., D.A., SEC, OSHA, DNR, DOJ, EPA, etc.) | <b>I.</b> Suppliers  | <b>N.</b> Advocacy groups                                |
| <b>D.</b> Customers   | <b>J.</b> Investors/Donors   | <b>O.</b> Potential plaintiffs and plaintiffs' attorneys |
| <b>E.</b> Police  | <b>K.</b> Distributors   | <b>P.</b> Insurers                                       |
| <b>F.</b> Politicians   |  | <b>Q.</b> Opponent(s)                                    |
|   |  | <b>R.</b> Others   |

**6. Promptly Resolving and Prioritizing Conflicting Objectives of Internal/External Audiences/Constituencies: What's The Tail and What's The Dog? Litigation/PR Objectives and Concerns.**

- /// Typical attorney concern: Don't volunteer anything; first do no harm; attorney-client privilege; ethical uncertainty; changing facts/early mistaken understanding; uncertain judicial reaction; defamation; admissions; inexperience with press or too eager for spotlight.
- /// PR concerns: Get in front of story; never look like you're hiding anything; protect the company brand and image; no comment never an option.
- /// Best communication strategies often consistent with PR and litigation objectives in and out of court.
- /// A failure to have a communications strategy simply lets someone else set the agenda/coverage/conversation and leads to misinformation, gossip and unnecessary negativity, both within and without an organization.

**7. Identify Messengers/Vehicle/Timing of Internal and External Communications.**

- /// Ethical rules at play: Trial publicity, impartiality and decorum of the tribunal, truthfulness in statements to others, confidentiality of information, role as independent and candid advisor, fairness to opposing parties and counsel, respect for the rights of third persons.
- /// Important for speaker to have credibility with audience (whomever it is) and also to understand or work with someone who understands the "rules" (i.e., confidentiality, off-the-record, privilege, etc.).
- /// Be mindful that facts and key messages can change over time; early press can set story (positively and negatively).
- /// Be very careful if there is the potential for the company or for individual employees, officers or directors to face criminal liability—standards for culpability may not be what you think.
- /// Privilege/discovery component of internal/external PR/press communications.

**8. Normal Decision-Making Processes/Timelines Will Not Work.**

- /// Pressures of time.
- /// Limitations of single individual to make all decisions.
- /// Requirement of acting on imperfect information.
- /// Requirement to act.
- /// Some people aren't available or good in a crisis.
- /// Not a good time for decision-makers to "learn the ropes" about litigation or dealing with the press.

**9. Mistakes Will Be Made.**

**10. Most Important Takeaways.**

- /// Ethical traps that can catch you in even more slow-paced scenarios arise and pass quickly in crisis context.
- /// You cannot act quickly enough in terms of getting additional help and in immediately responding to a crisis.
- /// Although the information you provide must be accurate, a failure to promptly get involved in a larger communication strategy can allow a situation to spin out of control.
- /// Advance planning can make a difference.
  - Risk management audit
  - Advanced media training
  - Crisis response plan and team

LAWYER PROFESSIONAL STANDARDS  
RULES AND CASES  
INTERPRETING SCR, CHAPTER 20  
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**PREAMBLE: A LAWYER'S RESPONSIBILITIES**

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a 3rd-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as 3rd-party neutrals. See, e.g., Rule 1.12 and Rule 2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For

example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include

the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

### **Scope**

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the rules but provide guidance for practicing in compliance with the rules.

[15] The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer,

for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These rules do not abrogate any such authority. Similarly, there are federally recognized Indian tribes with tribal governments in the State of Wisconsin and these tribes have rights of self-government and self-determination. It is not the intent of these rules to abrogate any such authority of tribal governments.

[19] Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Nevertheless, since the rules do establish standards of conduct by lawyers, a lawyer's violation of a rule may be evidence of breach of the applicable standard of conduct.

[21] The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each rule is authoritative.

## **CLIENT-LAWYER RELATIONSHIP**

### **SCR 20:1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### **SCR 20:1.2 Scope of representation and allocation of authority between lawyer and client**

(a) Subject to pars. (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case or any proceeding that could result in deprivation of liberty, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).

(1) The client's informed consent need not be given in writing if:

- a. the representation of the client consists solely of telephone consultation;
- b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms;
- c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order;
- d. the representation is provided by the state public defender pursuant to Ch. 977, stats., including representation provided by a private attorney pursuant to an appointment by the state public defender; or
- e. the representation is provided to an existing client pursuant to an existing lawyer-client relationship.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that: a. the representation is limited to the lawyer and the services described in the writing, and b. the lawyer does not represent the client generally or in matters other than those identified in the writing.

### **SCR 20:1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

#### **SCR 20:1.4 Communication**

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests by the client for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

#### **SCR 20:1.5 Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b)(1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.

(3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses.



- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by par.
- (d) or other law. A contingent fee agreement shall be in a writing signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee:
- (1) in any action affecting the family, including but not limited to divorce, legal separation, annulment, determination of paternity, setting of support and maintenance, setting of custody and physical placement, property division, partition of marital property, termination of parental rights and adoption, provided that nothing herein shall prohibit a contingent fee for the collection of past due amounts of support or maintenance or property division.
  - (2) for representing a defendant in a criminal case or any proceeding that could result in deprivation of liberty.
- (e) A division of a fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:
- (1) the division is based on the services performed by each lawyer, and the client is advised of and does not object to the participation of all the lawyers involved and is informed if the fee will increase as a result of their involvement; or
  - (2) the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them; or
  - (3) pursuant to the referral of a matter between the lawyers, each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm, the client is informed of the terms of the referral arrangement, including the share each lawyer will receive and whether the overall fee will increase, and the client consents in a writing signed by the client.
- (f) Except as provided in SCR 20:1.5(g), unearned fees and funds advanced by a client or 3rd party for payment of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.5(h). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

### **SCR 20:1.6 Confidentiality**

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).
- (b) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or

fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably likely death or substantial bodily harm;
- (2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (3) to secure legal advice about the lawyer's conduct under these rules;
- (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (5) to comply with other law or a court order; or
- (6) to detect and resolve conflicts of interest, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

#### **SCR 20:1.7 Conflicts of interest current clients**

(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in a writing signed by the client.

#### **SCR 20:1.13 Organization as client**

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to

the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Except as provided in par. (d), if, (1) despite the lawyer's efforts in accordance with par. (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not SCR 20:1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to pars. (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of SCR 20:1.7. If the organization's consent to the dual representation is required by SCR 20:1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) Notwithstanding other provisions of this rule, a lawyer shall comply with the disclosure requirements of SCR 20:1.6(b).

## **ADVOCATE**

### **SCR 20:3.4 Fairness to opposing party and counsel**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - (1) the person is a relative or an employee or other agent of a client; and
  - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

### **SCR 20:3.6 Trial publicity**

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (b) A statement referred to in par. (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in deprivation of liberty, and the statement relates to:
  - (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
  - (2) in a criminal case or proceeding that could result in deprivation of liberty, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
  - (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
  - (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in deprivation of liberty;
  - (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or
  - (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
- (c) Notwithstanding pars. (a) and (b)(1) through (5), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subs. (1) through (6):
  - (i) the identity, residence, occupation and family status of the accused;
  - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
  - (iii) the fact, time and place of arrest; and
  - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(d) Notwithstanding par. (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial likelihood of undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(e) No lawyer associated in a firm or government agency with a lawyer subject to par. (a) shall make a statement prohibited by par. (a).

### **SCR 20:3.7 Lawyer as witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by SCR 20:1.7 or SCR 20:1.9.

## **TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS**

### **SCR 20:4.1 Truthfulness in statements to others**

(a) In the course of representing a client a lawyer shall not knowingly:

- (1) make a false statement of a material fact or law to a 3rd person; or
- (2) fail to disclose a material fact to a 3rd person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by SCR 20:1.6.

(b) Notwithstanding par. (a), SCR 20:5.3(c)(1), and SCR 20:8.4, a lawyer may advise or supervise others with respect to lawful investigative activities.

#### **SCR 20:4.2 Communication with person represented by counsel**

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. (b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with SCR 20:1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

#### **SCR 20:4.3 Dealing with unrepresented person**

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall inform such person of the lawyer's role in the matter. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with SCR 20.1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

#### **SCR 20:4.4 Respect for rights of 3rd persons**

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a 3rd person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

(c) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information contains information protected by the lawyer-client privilege or the work product rule and has been disclosed to the lawyer inadvertently shall:

(1) immediately terminate review or use of the document or electronically stored information;

(2) promptly notify the person or the person's lawyer if communication with the person is prohibited by SCR 20:4.2 of the inadvertent disclosure; and

(3) abide by that person's or lawyer's instructions with respect to disposition of the document or electronically stored information until obtaining a definitive ruling on the proper disposition from a court with appropriate jurisdiction.

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